

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43192

James & Carol Gulbranson,

Debtor(s).

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**NOTICE OF HEARING AND OBJECTION TO  
CONFIRMATION OF CHAPTER 13 PLAN**

Michael Farrell, Chapter 13 trustee, by and through his undersigned attorney, hereby objects to confirmation of the Chapter 13 plan filed by Debtor.

1. The Court will hold a hearing on this motion at 10:00 a.m. on August 5, 2004, in Courtroom 7 West, United States Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on August 4, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than August 2, 2004, which is three business days prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. Michael Farrell is the Chapter 13 trustee ("Trustee") of the Debtor in the above-referenced bankruptcy case. This case is pending before this Court.

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This objection is brought pursuant to 11 U.S.C. §1324 and 1325, Bankruptcy Rule 3015 and Local Rule 3015. This matter is a core proceeding.

5. Debtor(s) commenced this case by filing a voluntary Chapter 13 petition on June 5, 2004. Debtor(s) filed a Chapter 13 plan on that date. The plan provides for payments of \$137.00 per month for 36 months, resulting in a dividend to unsecured creditors of \$12.00 or 00.1 percent.

6. Trustee objects to the confirmation of the plan on the basis that Debtors are not submitting all of their projected disposable income during the first three years into the plan. Debtors are paying their truck and motorcycle loans directly and not through the plan. Paying those secured creditors through the plan may result in a meaningful dividend to unsecured creditors, instead of the nominal figure proposed by Debtors. Trustee also contends that this plan is not filed in good faith.

8. Trustee objects on the basis that Debtors have not provided documentation necessary for

Trustee to determine whether the plan is feasible and whether the Debtors are submitting all of their disposable income. Debtors are operating a business and have not provided sufficient financial information to trustee..

9. Trustee further objects because Debtors' plan is vague. The plan indicates that mortgage arrearages and taxes are to be paid through the plan but fails to indicate when these obligations are to be paid.

**WHEREFORE**, Michael Farrell requests an order as follows:

- (A) Denying confirmation of the Chapter 13 plan; and
- (B) Granting any other relief the Court deems just and proper.

Hedback Arendt & Carlson, PLLC

Dated: July 21, 2004

\_\_\_\_\_/s/ John A. Hedback\_\_\_\_\_  
John A. Hedback, #142438  
Attorney for Chapter 13 Trustee  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 789-1331  
Attorneys for the Movant

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:


James & Carol Gulbranson,

BKY 04-43192

VERIFICATION

The Trustee verifies under penalty of perjury that the information contained in the foregoing motion is true and correct to the best of the Trustee's knowledge, information and belief.

Dated 7-21-04

  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43192

James & Carol Gulbranson,

**MEMORANDUM**

Debtor(s).

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Michael Farrell, Chapter 13 trustee, (Trustee) hereby submit its memorandum of fact and law in support of its Objection to Confirmation (Motion).

**I. STATEMENT OF FACTS**

The facts supporting the Objection to Confirmation are set forth in the attached verified motion. In addition, Trustee also relies on the representations made by Debtor in their verified Schedules on file and of record herein.

**II. STATEMENT OF LAW AND ARGUMENT**

Section 1324 provides that a party in interest may object to confirmation of a plan. A Chapter 13 trustee would be such a party in interest.

Section 1325 provides that the Court shall confirm a plan if it meets certain requirements.

Section 1325(b)(1) provides that if an objection is filed by an unsecured creditor or the Chapter 13 trustee, the Debtor's plan must either pay unsecured creditors in full or provide for payment of all of Debtor's projected disposable income for the next three years. Disposable income is the amount of the income available after the payments reasonably necessary for the support of the Debtor and his dependents.

Section 1325(a)(3) requires that the plan be proposed in good faith. Good faith is based upon the totality of the circumstances. *In re Molitor* 76 F.3<sup>rd</sup> 218, 220-221 (8<sup>th</sup> Cir. 1996) (citing *In re LeMaire*, 898 F.2d 1346, 1349 (8<sup>th</sup> Cir. 1990)).

Section 1325(a)(6) provides that the Court shall confirm the plan if the debtor will be able to make all payments under the plan and comply with the plan. Trustee is unable to determine this with the information provided.

Hedback, Arendt & Carlson, PLLC

Dated: July 21, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_

John A. Hedback, #142438  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 789-1331  
Attorneys for Movant

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

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James & Carol Gulbranson,

**UNSWORN DECLARATION FOR  
PROOF OF SERVICE**

Debtor(s).

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The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with office address of 2855 Anthony Lane, St. Anthony, MN 55418, declares that on the date below, I served the following:

1. Notice and Objection to Confirmation of Chapter 13 Plan;
2. Memorandum;
3. Proposed Order; and
4. Unsworn Declaration for Proof of Service.

upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Anthony, MN addressed to each of them as follows:

Office of United States Trustee  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

JAMES & CAROL GULBRANSON  
213 MILL ST  
BOX 144  
CLEAR LAKE, MN 55319

SAMUEL V CALVERT  
PO BOX 1044  
ST CLOUD, MN 56302-1044

and I certify under penalty of perjury, that the foregoing is true and correct.

Dated: July 22, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43192

James & Carol Gulbranson

**ORDER DENYING  
CONFIRMATION OF  
CHAPTER 13 PLAN**

Debtor(s).  
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This case came before the Court on the confirmation of Debtor's Chapter 13 plan. An objection to confirmation has been filed by Michael Farrell, Chapter 13 trustee. Appearances were noted on the record. Based on the file, record and proceedings herein,

**IT IS HEREBY ORDERED:** Confirmation of Debtor's Chapter 13 plan is hereby denied.

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge